

Claims 1-5 and 14 are rejected under 35 U.S.C. § 102(e) as being anticipated by Ribier et al., U.S. Patent No. 6,051,250 ("RIBIER"). Claim 2 has been cancelled without prejudice and it is submitted that claims 1, 3-5 and 14 are not anticipated by RIBIER.

RIBIER, unlike Applicants' invention, reveals an emulsion and not a particulate suspension. It is to be noted and pointed out that Applicants' invention is directed at a stable, particulate aqueous dispersion or suspension of a nutrient which is ordinarily not water soluble. In this regard, reference is made to the subject specification at page 1, "DESCRIPTION OF THE RELATED ART", first paragraph, and to page 5, last paragraph.

All that RIBIER reveals is a combination of (a) an aqueous emulsion of vesicles, the membranes of the liquid phase being composed of at least one lipid, including a natural phospholipid, such as egg or soya bean lecithin (RIBIER, at col. 6, line 64-67, col. 8, lines 45-49); (b) a stabilizer that stabilizes the vesicles, selected from glycerol alginates, propylene glycol alginates, gellan gum and welan gum (RIBIER, at col. 6, lines 23-27); (c) optionally, a surfactant, such as polyoxyethylene/polyoxypropylene copolymers (RIBIER, at col. 6, lines 33-63); and (d) optionally, an active cosmetic or pharmaceutical agent, selected from a "guide" which contains a **long** list of agents from which one can pick and choose in a hindsight fashion (RIBIER, at col. 9, lines 38-41, col. 10, line 41 to col. 14, line 12). Unlike Applicants' invention, RIBIER requires the stabilizers, e.g. alginates, discussed above.

Amended claim 1 and the remaining claims directly or indirectly dependent therefrom define Applicants' invention in terms of "consisting essentially of". The transitory term "consisting essentially of" is a term of art having an accepted meaning in chemical as well as pharmaceutical patent practice. *Carter Wallace Inc. v. Gillette Co.*, 531 F.Supp. 840, 874 n.29., 211 USPQ 499, 527 n.29 (Mass. 1981). The use of this term renders the claim(s) open

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only for the inclusion of unspecified ingredients which do not materially affect the basic and novel characteristics of the composition. *Exparte Davis & Tuukkanen*, 80 USPQ 448, 450 (POBA 1948). Thus, the stabilizers of RIBIER, e.g. glycerol alginate, are excluded from Applicants' claimed invention.


RIBIER does not reveal or hint at the stabilized **particulate** suspension of the combination of nutrients with their stabilizers, as defined by Applicants. RIBIER requires its defined stabilizers whereas Applicants' invention does not need such RIBIER stabilizers and is defined to exclude such stabilizers.

Anticipation under 35 U.S.C. § 102(e) means that a single prior art reference identically shows every element of the claimed invention, that is, the claim being examined. *Orthokenetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1 U.S.P.Q.2d 1081 (Fed. Cir. 1986); *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). RIBIER fails in this regard.

It is respectfully submitted that Applicants' invention, as defined in claims 1, 3-5 and 14, is not anticipated under 35 U.S.C. § 102(e) by RIBIER and allowance of these claims is requested.

Claims 1-3, 5 and 14 are rejected under 35 U.S.C. § 102(e) as being anticipated by Schweikert et al., U.S. Patent No. 5,925,684 ("SCHWEIKERT"). Claim 2 has been cancelled without prejudice and it is respectfully submitted that claims 1, 3, 5 and 14 are not anticipated by SCHWEIKERT.

SCHWEIKERT reveals an oil in water emulsion and not a particulate suspension. SCHWEIKERT's emulsion contains lycopene contained in the oil phase and an emulsifier of polyoxyethylene/polyoxypropylene block polymer and/or lecithin in the aqueous phase. Claim 1



has been amended to reflect a particulate suspension. Applicants invention is defined in terms of “consisting essentially of”, as discussed above. It is submitted that SCHWEIKERT does not reveal the combination claimed in amended claim 1 and the claims dependent directly or indirectly therefrom or the combination claimed in claim 14. *Orthokenetics, supra; In re Bond, supra.*

Claims 1, 3, 5 and 14 are not anticipated by SCHWEIKERT under 35 U.S.C. §102(e) and allowance of these claims is requested.

Claims 1, 3, 6 and 14 are rejected under 35 U.S.C. §103(a) in view of SCHWEIKERT taken in view of Elson, U.S. Patent No. 5,510,391 (“ELSON”) and King et al., U.S. Patent No. 5,661,149 (“KING”).

Claim 2 has been cancelled without prejudice. The remaining claims are not deemed obvious in view of these references.

The deficiencies of SCHWEIKERT discussed above are reiterated hereat. It is true that SCHWEIKERT reveals a combination of lycopene with lecithin. However, SCHWEIKERT does not reveal or even hint at lycopene combined with the stabilizers as defined by Applicants much less that the other nutrients of Applicants’ invention are in a stable particulate suspension as defined by Applicants.

SCHWEIKERT reveals lecithin and polyoxyethylene/polyoxypropylene copolymers emulsifiers, not stabilizers. SCHWEIKERT does not reveal or hint at the hydrocolloids, surfactants, DOWICIL stabilizers, as defined by Applicants. Only with the aid of the improper hindsight provided by Applicants’ disclosure would one of ordinary skill in the art possibly deem Applicants’ invention obvious in view of SCHWEIKERT. It is submitted that

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SCHWEIKERT taken alone does not render claims 1, 3, 6 and 14 obvious and allowance of these claims is respectfully requested.

The deficiencies of SCHWEIKERT are not cured by a combination with ELSON. All that ELSON reveals is the combination of Vitamin K combined with DOWICIL. ELSON does not address a stable nutrient suspension much less the suspension as defined by Applicants. ELSON does not even hint at Applicants' invention and, accordingly, ELSON does not render claims 1, 3, 6 and 14 obvious.

Combining SCHWEIKERT with ELSON does not cure the deficiencies of each reference, as discussed above. Accordingly, claims 1,3, 6 and 14 are not obvious in view of this combination.

KING does not cure the deficiencies of SCHWEIKERT and ELSON. KING reveals combining DOWICIL with a 1-hydroxymethylpyrrazole. KING does not reveal or hint at Applicants' defined stable nutrient suspension. KING does not render claims 1, 3, 6 and 14 obvious. Claims 1,3, 6 and 14 are not obvious under 35 U.S.C. §103(a) in view of SCHWEIKERT, ELSON or KING when each is taken alone or in any combination. Allowance of these claims is respectfully requested.

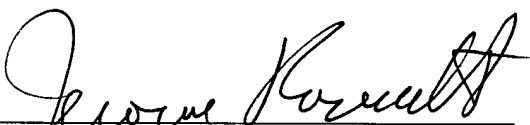
Filed along with this Response is a petition for a one-month extension of time to respond to the Office Action dated June 29, 2001.

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The Examiner is hereby authorized to call the undersigned attorney of record  
“collect” on any matter connected with this application. The telephone number is 212-588-0800.  
In the absence of the undersigned attorney of record, the call will be accepted by any attorney  
empowered in this application.

Respectfully submitted,

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